

Decision
to amend the right of use of frequencies allocated to Onitelecom -
Infocomunicações, S.A. to operate the fixed wireless access (FWA) system

1. Request

Onitelecom - Infocomunicações, S.A., (Onitelecom) is the holder of the Right of Use of Frequencies ANACOM no. 6/2006 issued on 23 November 2006, which authorises the use of a block of 2x56MHz, corresponding to the 24.549 GHz-24.605 GHz and 25.557 GHz - 25.613 GHz frequencies for FWA systems in geographical areas 1, 2 and 9, as defined in Decree no. 1062/2004 of 24 August.

By letter dated 29 December 2010¹, Onitelecom requested that ICP-ANACOM give approval to the phased deactivation of its FWA network based on the non-maintenance of the products and the abandonment of their lines by the manufacturers. It claims that the absence of a standard on the band in question limits the offer of proprietary equipment and systems, whereby the infrastructure in operation is approaching the end of its life cycle with no possibility of support by the supplier.

As such, Onitelecom claims that, in due course, it will be compelled to abandon this technology, and it proposes to undertake a phased deactivation of existing FWA infrastructure ² within five years, according to the following plan (no. of base stations at the end of each year, from 2010 until the end of the period of the license):

¹ Letter with Ref. 140/GRL/2010, arriving at ICP-ANACOM on 05.01.2011 (AH000592/2011), with follow-up sent on 7.02.2011, by letter with Ref. 009/GRL/2011, arriving at ICP-ANACOM on 10.02.2011 (AH007206/2011).

² Under the terms of the annotation made to the Right of Use of Frequencies (annotation no. 1) on 4 February 2009, it would involve the installation of a total of 21 base stations. (annotation available at [Fixed Wireless Access \(FWA\)](#)).

YEARS	2010	2011	2012	2013	2014
Zone 1	10	10	10	8	0
Zone 2	7	5	3	0	0
Zone 9	3	3	3	3	3

It is further clarified that, with respect to Zone 1, deactivation will start in 2013, with the closure of all stations completed during the year 2014. With respect to Zone 2, deactivation will begin in 2011, with closure of this area completed during 2013. Zone 9 will be maintained until the end of 2014, and then deactivated.

In this context, it requests ICP-ANACOM to give approval to the plan to deactivate the FWA network as proposed.

2. Background

The request made by Onitelecom represents an amendment of the conditions laid down in article 4 of the right of use of frequencies that authorises the use of frequencies for FWA (DUF ANACOM No. 6/2006).

Under the terms of Law no. 5/2004 of 10 February (LCE - Lei das Comunicações Electrónicas (Electronic Communications Law)), the conditions applicable to the rights of use may be amended in objectively justified cases and according to the principle of proportionality, by administrative act .

In such circumstances, the amendment to be approved shall be made subject to the general consultation procedure, whereby interested parties, including users and consumers, shall be allowed a sufficient period of time in which to comment on the proposed amendments, which period, except in exceptional and duly justified circumstances, shall not be less than 20 days (article 20 of LCE).

The modification requested entails amendment of the valid administrative act of allocation to Onitelecom of the right of use of frequencies for FWA, allowed under article 147 of the Código do Procedimento Administrativo (Administrative Proceeding Code) and shall be subject to the regulatory rules governing revocation. In this context, ICP-ANACOM is the competent authority to enact the amendment, which shall take the form of a revoked act (articles 142 and 143 of the CPA, applicable by force of article 147).

Valid administrative acts constituting rights or legally protected interests may be amended to the extent that they are unfavourable to the interests of the recipients or where all parties concerned give their consent to revoke the act and where it does not involve non-disposable rights or interests (article 140, paragraph 2 of the CPA applying pursuant to article 147 of the same Code).

In this case the amendment of the administrative act was requested by the recipient, whereas it does not involve a non-disposable right or interest.

3. Analysis

FWA is considered as a system that provides, in whole or in part, the connection of the end-user (or group of end-users concentrated on the same radio termination) to an access point or distribution of a public communications network as defined in point z) of article 3 of the LCE, whereas it can also be used as a system supporting the transmission network.

It is recalled that in February 2009, by determination of the Management Board of ICP-ANACOM, the right of use of frequencies of Onitelecom was amended³, whereby the number of stations to be installed in zone 1 was reduced from 11 to 10⁴.

³ Annotation to the title available at [Fixed Wireless Access \(FWA\)](#).

⁴ [ONITELECOM - Amendment of the right to use FWA frequencies](#).

As such, Onitelecom was obliged to "maintain a minimum number of installed Central Stations respecting the following accumulated evolution and quantification":

YEARS	Zone 1	Zone 2	Zone 9	Total Stations
2006	10	7	3	20
2007	10	7	3	20
2008	10	7	3	20
2009	10	7	3	20
2010	10	7	3	20

Onitelecom will maintain the same number of stations until the right of use of frequencies expires on 01 January 2015.

Having given consideration to the request, ICP-ANACOM has concluded that, despite the fact that, to date, no other operator holding rights of use of frequencies in this band have claimed that the operating infrastructure is approaching the end of its life cycle, in terms of spectrum management, there is no obstacle to proceeding with the amendment of right of use of frequencies ICP-ANACOM no. 6/2006 on the terms requested.

As such, the commercial operation of the FWA system will continue in geographical areas 1, 2 and 9, whereby Onitelecom shall remain bound to the installation of a minimum number of central stations, observing the following evolution and quantification:

YEARS	2011	2012	2013	2014
Zone 1	10	10	8	0
Zone 2	5	3	0	0
Zone 9	3	3	3	3

At the end of the period of validity of the right of use of frequencies, Onitelecom will have advanced with the total deactivation of the stations.

In accordance with the system of fees for the use of frequencies, applicable to FWA systems, provided for in Administrative Rule no. 1473-B/2008 of 17 December⁵ (point 1.3.8 - Fixed wireless access (FWA) and broadband wireless access (BWA) systems), the deactivation requested entails a change in the amount due in 2013 and 2014.

At a different level, it is noted that in seeking approval of the present plan to deactivate the FWA network, the applicant does not clarify whether such will result in cessation of provision of the offer to their subscribers or if it envisages provision of the contracted services by other means.

In the first case, the LCE determines that users of publicly available electronic communications networks and services have a right to be informed, with a minimum of 15 days notice, prior to the cessation of provision (article 39, paragraph 1, point c) of the LCE). This information must, with the same period of notice, also be communicated to ICP-ANACOM (article 39, paragraph 3 of the same law).

In the second case, where the company makes an amendment to the contractual conditions, it is bound to notify subscribers of the proposed amendment, in an appropriate manner and with notice of not less than one month, and is bound, simultaneously, to inform subscribers of their right to terminate the contract without penalty where they do not accept the new conditions, according to the time limit stipulated in the contract (article 48, paragraph 3 of LCE).

Depending on the case, Onitelecom is bound to comply with the applicable legal regime.

⁵ Repeals Administrative Rule no. 1062/2004 of 25 August and approves the fees due in respect of the issuance of declarations supporting rights, for the exercise of the activity of supplier of electronic communication networks and services, for the allocation of the rights of use of frequencies and numbering, for use of the radio spectrum and other fees due to ICP-ANACOM.

4. Prior hearing and general consultation

In this context, by determination of 3 March 2011, ICP-ANACOM approved a draft decision (DD) to amend the right of use of frequencies allocated to Onitelecom to operate the fixed wireless access (FWA) system.

The draft decision was submitted to a prior hearing of Onitelecom⁶, which saw fit to state its position, prior to the time limit established for said purpose, by letter⁷ received at ICP-ANACOM on 25 March.

The DD was additionally submitted to the general consultation procedure pursuant to article 8 of the LCE, in which respect Vodafone Portugal, Comunicações Pessoais, SA saw fit to state its position⁸.

The argument presented in respect of the hearing and general consultation procedure, as well as the position taken by ICP-ANACOM thereto, is set out in the report on the prior hearing, which report constitutes an integral part of the present decision and to which contents reference is made.

5. Decision

Accordingly, taking into account the request submitted by Onitelecom, the analysis to which it was subject and the reasoning set out in the report on the prior hearing and the general consultation procedure, the Management Board of ICP-ANACOM, pursuant to the assignments set forth by article 6, paragraph 1, point c) of the Statutes in annex to Decree Law no. 309/2001 of 7 December, in pursuit of the regulatory objectives set forth in article 5, paragraph 1, point a) and paragraph 2 point d) and pursuant to articles 15 and 20 of the LCE, article 26, paragraph I) of the

⁶ Notified by notice ANACOM-S023940/2011 of 4 March

⁷ Letter with reference 018/GRL/2011 of 22.03.2011.

⁸ Received by email on 6 April 2011 (reference 20110406_VF_Espectro_CPA_AlteraçãoFWA_ONI) and subsequently resent by fax on 8 April .

Statutes and articles 140, 142 and 143 applicable by force of article 147, all of the Código do Procedimento Administrativo (Administrative Proceeding Code), determines:

To amend the right of use of frequencies allocated to Onitelecom - Infocomunicações, SA. for the operation of FWA systems in relation to the minimum number of central stations to be maintained by the company under annotation no. 2, which is included in the authorising title and placed in annex to the present determination.

Lisbon, 15 April 2011

RIGHT OF USE OF FREQUENCIES

ICP-ANACOM No. 6/2006

ANNOTATION NO. 2

Paragraph 2 of article 4 shall be amended to read as follows:

2. ONITELECOM undertakes to maintain a minimum number of installed Central Stations respecting the following accumulated evolution and quantification:

YEARS	2011	2012	2013	2014
Zone 1	10	10	8	0
Zone 2	5	3	0	0
Zone 9	3	3	3	3

Lisbon, 15 April 2011